

No. 21-1224

IN THE
United States Court of Appeals
FOR THE
Seventh Circuit

Instituto Mexicano Del Seguro Social,
Plaintiff-Appellant,

v.

Zimmer Biomet Holdings, Inc.,
Defendant-Appellee.

On Appeal from the Northern District of Indiana, South Bend Division, The
Honorable Damon R. Leichty,
Case No.: 3:20-cv-00099-MGG

**OPPOSITION TO MOTION FOR LEAVE TO FILE
THE BRIEF OF AMICUS CURIAE**

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The Secretaría de Relaciones Exteriores de los Estados Unidos Mexicanos (“SRE”) motion for leave to file an Amicus Curiae brief is premised on a fundamental misrepresentation regarding the nature of this litigation. Appellant Instituto Mexicano del Seguro Social (“IMSS”) has not “sued Zimmer Biomet for paying bribes...” (Dkt. 24-1, p. 1), nor is this an “anti-corruption action.” The appeal before this Court concerns a civil breach of contract action relating to the sale of medical devices in Mexico.

Specifically, IMSS alleges that Defendant-Appellee Zimmer Biomet Holdings, Inc. (“Zimmer Biomet”) made fraudulent misrepresentations in connection with a contractual warranty, that Zimmer Biomet therefore breached the alleged contract, and that Zimmer Biomet’s acts violate a Mexican law pertaining to Mexican government contracts. Because this action concerns application of Mexican law to a Mexican contract for actions that occurred in Mexico and resulted in the importation and distribution of medical devices in Mexico, the District Court appropriately exercised its discretion to dismiss the action under the doctrine of *forum non conveniens*.

To escape the merits of dismissal and to mysteriously continue avoiding bringing its claims in Mexico, IMSS disguises its breach of contract case as an action sounding in bribery and corruption, then invokes an inapplicable 2003 United Nations anti-corruption resolution that has never been held to prevent *forum non conveniens* dismissal. Doubling down on its mysterious effort to avoid litigating its alleged claims in Mexico, counsel for IMSS appears to have recruited Ambassador

Alberto Székely to draft an Amicus Curiae brief on behalf of the United Nations, and was granted an extension of time for the purpose of seeking leave to do so. (Dkt. No. 24-1, p. 3; Dkt No. 20-2.)¹ Apparently, Ambassador Székely could not gain the required approvals to file a brief on behalf of the United Nations advancing IMSS’s interpretation of the United Nations’ resolution. Instead, IMSS now asks the Court to permit Ambassador Székely to submit the same brief, but this time on behalf of SRE. (Dkt. No. 24-1, p. 3 “Ambassador Székely is the principal drafter of the attached amicus filing, which was originally intended to be in [sic] behalf of Mexico and the United Nations.”)

Zimmer Biomet opposes the request for leave on several grounds. First, it is perplexing that Ambassador Székely seeks to file an Amicus Curiae brief that was purportedly written to reflect the views of the United Nations, and now is simply being re-labeled to purportedly reflect the views of a different Amicus party, SRE. For that compelling reason alone, request for leave should be denied as a waste of both the Court’s and the Appellee’s resources. Second, SRE’s proposed brief provides purely cumulative argument that will not aid the understanding of the Court. SRE purports to have an interest in this matter as a Mexican government agency that will make representations as to the interests of the Mexican government. But IMSS alleges that it is a Mexican government agency, and as such, it has already made

¹ Notably, IMSS also recently sought an extension on behalf of the United Nations before the Sixth Circuit in *Instituto Mexicano del Seguro v. Stryker Corporation* (No. 21-1112). The Sixth Circuit denied IMSS’s motion, noting that the request had not come from counsel for the United Nations.

such representations in its principal brief. (Dk. No. 12, p. 22.) There is no value to the Court in having this position repeated in an Amicus filed by a purported second agency of the Mexican government. Finally, SRE does little more than ask to further advocate that the lower court's ruling violates the referenced United Nations convention, an argument that is patently wrong, but in any event, is already set forth in IMSS's principal brief.

Accordingly, Zimmer Biomet opposes the submission of an Amicus Curiae brief by SRE as a cumulative, unnecessary filing arising under suspicious circumstances and that will cause needless expense to the Appellee and an associated drain on this Court's judicial resources. Zimmer Biomet respectfully requests the Court deny SRE's motion.

Dated: May 18, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on May 18, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Troy S. Brown
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